

this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—

(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

(2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D))

§ 300.512 Hearing rights.

(a) *General.* Any party to a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) *Additional disclosure of information.*

(1) At least five business days prior to a hearing conducted pursuant to § 300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) *Parental rights at hearings.* Parents involved in hearings must be given the right to—

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

(Authority: 20 U.S.C. 1415(f)(2), 1415(h))

[71 FR 46753, Aug. 14, 2006, as amended at 73 FR 73027, Dec. 1, 2008]

§ 300.513 Hearing decisions.

(a) *Decision of hearing officer on the provision of FAPE.* (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—

(i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§ 300.500 through 300.536.

(b) *Construction clause.* Nothing in §§ 300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under § 300.514(b), if a State level appeal is available.

(c) *Separate request for a due process hearing.* Nothing in §§ 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) *Findings and decision to advisory panel and general public.* The public agency, after deleting any personally identifiable information, must—